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Supreme Court, U.S.
FILED

No. 98-1141 JAN 15 1999

In The

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1998

MARINA DE LARRACOECHEA AZUMENDI as Plaintiff-Personal Representative and Ancillary Co-Executrix of the ESTATE OF MARIA NIEVES DE LARRACOECHEA AZUMENDI, deceased, on behalf of said Estate and the lawful survivors of the deceased,

Petitioner,

vs.

HANS FRANK ROSENKRANZ as Plaintiff-Personal Representative and Ancillary Co-Executor of the ESTATE OF, etc.

Respondent,

PAN AMERICAN WORLD AIRWAYS, INC. a Foreign Corporation, and PAN AMERICAN WORLD SERVICES, INC., ALERT MANAGEMENT SYSTEMS, INC. Florida Corporations,

Respondents,

On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District

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PETITION FOR WRIT OF CERTIORARI

MARINA DE LARRACOECHEA AZUMENDI
307 East 44th Street; 1120
New York, New York 10017
(212) 697-0189

Labayru No. 1
48012 Bilbao
Spain
34-94-421.33.85

Petitioner Appearing Personally

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4 PP

QUESTIONS PRESENTED

1. Whether the district court by failing to see "reversible error demonstrated" validates and furthers the denial of the equal protection of the law and the due process guaranteed by the Fourteenth Amendment in the protection of a wrongful death action by:

   A. Ignoring the abuse of discretion of the circuit court --intensely bias to the unfair settlement-- in the transfer of a wrongful death action with jury trial to be compromised and settled by the Surrogate's Court, of New York County, in want of subject matter jurisdiction over the Estate of an Spanish domiciliary,

   B. Sustaining the civil conspiracy by counsel for the plaintiffs, under U.S.C. 42 § 1983 and 1985, and in collusion to deny the timely reserved right to trial by jury and "the day in court", based on a joint effort in:
   a) deliberate misrepresentations,
   b) progress with inconsistent position
   c) conflict of interest - former client

   C. Accumulation of denials and "added difficulties" departing from the essential requirements of law and the accepted and usual course of judicial proceedings unfairly and unproportionately burdening the weakest party.

Brief Introductory Statement

The instant petition for certiorari review originates, in the destruction of Pan Am flight 103 over Lockerbie, Scotland on December 21, 1988, by a terrorist bomb. Maria Nieves de Larracoechea Azumendi, resident, domiciliary and national of Spain at the time of her death,

was a flight attendant on duty.

On or about March, 1989, a claim on behalf of the Estate was instituted at the New York Workers' Compensation Board.

The will was probated and not contested --nor the Spanish domicile-- in Bilbao, Spain, on June 12, 1989. Ancillary letters testamentary were granted to the co-executors, plaintiffs and personal representatives of the Estate (Petitioner and Rosenkranz) by decree (Renee R. Roth, S.) of the Surrogate's Court, New York County, dated December 15, 1989, following a petition submitted on December 14, 1989, to administere a bank account the decedent had in New York.

On December 20, 1989, plaintiffs filed a wrongful death action on behalf of the Estate at the circuit court of Dade County, Florida. The liability of the airline was unanimously established, on July 10, 1992. Jury trial in Florida was scheduled for June 3, 1996.

On May 23, 1996, Rosenkranz served upon Petitioner, unaware, an application to compromise and settle at the Surrogate's Court, New York County. It was granted by ex-parte order of the probate Court, dated November 7, 1996. Petitioner opposed the settlement and sustains the demand for jury trial in the original forum of Florida.

Based on the New York probate ex-parte order, Rosenkranz filed at the circuit court of Dade County a stipulation to dismiss the action with prejudice, dated March 6, 1997. It was so ordered on March 12, 1997, instead of a decision on Pan Am's motion to dismiss 'on forum non conveniens' filed March 13, 1996.

PARTIES TO THE PROCEEDING BELOW

The parties before this Court are those set forth in the caption.

MARIA NIEVES DE LARRACOECHEA AZUMENDI ("the Decedent") was a resident, domiciliary and national of Spain at the time of her death. The Will executed in Bilbao, Spain, with date of May 16, 1984, was probated and not contested --nor the Spanish domicile-- in Bilbao, Spain, on June 12, 1989. The Estate is governed by Spanish Law. The Decedent was a seventeen year senior flight attendant with Pan Am.

MARINA DE LARRACOECHEA AZUMENDI ("Petitioner") is sister of the decedent; Basque of Spanish nationality with English as second language and residences in New York, New York; and Bilbao, Spain; Plaintiff-Appellant and Personal Representative in the Florida wrongful death action for damages; Ancillary Co-Executrix by decree (Renee R. Roth, S.) of the Surrogate's Court, New York County, dated December 15, 1989, and Beneficiary-Distributee; representing by general powers of attorney approximately 50% interests of the lawful survivors:

MARINA AZUMENDI VALLE, mother of the Decedent, and Beneficiary-Distributee of 1/3 (33.33%) of the Estate, by the testatrix' dispositions, and pursuant to Art. 809 of the Spanish Civil Code. Also universal heiress of her sister's Estate of Maria Teresa Azumendi Valle.

MARIA TERESA AZUMENDI VALLE, aunt and godmother of the Decedent, and Beneficiary-Distributee of 10% of the Estate and a partial dependant of $100 - $150 per month. Deceased January 1997.

ANNE DE LARRACOECHEA GONZALEZ, niece and god-child of the Decedent.

MARIA JOSE GONZALEZ IRIBARREN, sister-in-law of the Decedent.

MARIA ENEDINA FLORES GARCIA, life long friend of the Decedent.

All of the above beneficiaries-distributees totalling approximately 50% of the Estate and residents, domiciliaries and nationals of Spain.

HANS FRANK ROSENKRANZ ("Rosenkranz") is husband of the Decedent, Respondent, Plaintiff-Appellee and Personal Representative in the Florida wrongful death action for damages; Ancillary Co-Executor and Beneficiary-Distributee of approximately 50% of the Estate; resident, domiciliary and national of Germany. The couple had no issue.

Rosenkranz appears represented by counsel NICHOLAS GILMAN ("Gilman") of GILMAN & PANGIA, in Washington, D.C., and JEFFREY M. LIGGIO ("Liggio") in West Palm Beach, Florida, FBN 357741, subcontracted by the former. Gilman and, at the time, Gilman, Olson & Pangia were retained on December 14, 1989, by Petitioner and Rosenkranz, jointly, as clients-plaintiffs, for the wrongful death action filed on December 20, 1989, in the circuit court of Dade County, Florida and part of this proceeding for certiorari review.

Petitioner sustains the most vehement and forceful objections to said continued legal representation on the grounds, inter alia, of conflict of interest - former client in the same action and breach of contract. See Procedural History, B. Nicholas Gilman, Jeffrey M. Liggio, Lionel A. Marks, Attorneys for the Plaintiffs. Deprivation of adequacy of representation and effectiveness of counsel, ab initio, in civil conspiracy and collusion, infra.

PAN AMERICAN WORLD AIRWAYS, INC. a foreign corporation, at the time headquartered in New York, **PAN AMERICAN WORLD SERVICES, INC.** and **ALERT MANAGEMENT SYSTEMS, INC.**, subsidiaries Florida Corporations (collectively "Pan Am").

Pan Am appears represented by Barwick, Dillian, Lambert & Ice, P.A., Joy L. Barwick, FBN 0058602 at the district court; Lyndel M. Lambert, FBN 308013, at the circuit court.

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PETITION FOR WRIT OF CERTIORARI

Marina de Larracoechea Azumendi as Ancillary Co-Executrix and Personal Representative of the lawful survivors of the Estate of Maria Nieves de Larracoechea Azumendi, deceased, respectfully petition for certiorari to review the opinion filed October 14, 1998, and the mandate-order, dated October 30, 1998, of the District Court of Appeal of Florida, Third District ("DCAF-3"), the interlocutory orders rendered by said court and the motion papers upon which they are based.

Petitioner requests a certiorari review on the full, albeit incomplete record on appeal for the action filed December 20, 1989.

Abeyance of Certiorari Review

Petitioner further requests that in the interest of justice and judicial economy, this Court hold in abeyance this certiorari review, until the related appeal for want of subject matter jurisdiction of the Surrogate's Court, New York County (1), be determined at the Appellate Division, First Department of the New York Supreme Court, noted for the January 1999 Term. Oral argument is expected to be calendared for the month of February.

Sustained Objection To Attorneys Gilman, Saguil, Liggio, And Associates for Rosenkranz.

Petitioner most forcefully sustains the repeated objections to the legal representation of Rosenkranz by Gilman, Liggio, Saguil, partners and associates, on the grounds, inter alia, of conflict of interest - former client, as further developed infra.

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(1) See footnote 1 of Stipulation and Order of Dismissal with Prejudice. Appendix K, A 14.

Petitioner respectfully request the leniancy of the Court as to the instant submission: "Pro-Se complaints, are held to less stringent standards than formal pleadings by lawyers", Haines v. Kerner, 92 S.Ct 594 (1972).

OPINIONS BELOW

The DCAF-3 rendered an opinion 'per curiam' filed October 14, 1998, holding that "no reversible error had been demonstrated and accordingly affirm", reprinted in the Appendix hereto at A 1-2. In prominent part states: "NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF". Based on said opinion the DCAF-3 issued a mandate-order, dated October 30, 1998, reprinted in the Appendix, A 3.

The Supreme Court of Florida dismissed a notice to invoke discretionary jurisdiction with date of December 11, 1998, reprinted in the Appendix C hereto at A 4.

In the course of the appeal, the DCAF-3 rendered various interlocutory orders of relevance, consequence and detriment to Petitioner's seriously undermined and disadvantgeous position. The most significant ones are reprinted in Appendix D to J, A 5-12.

Appendix K reprints the notice of appeal and the orders taken from:

Appellant has failed to find any of the above opinions and orders reported.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

As the opinion of the DCAF-3 from which petitioner seeks review was filed on October 14, 1998, this petition is timely filed.

BEST AVAI

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourteenth Amendment to the United States Constitution, Section 1, provides:

> No state shall make or enforce any law which which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the the laws.

2. The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. 42 U.S.C. § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom or usage of any state or territory of the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

4. 42 U.S.C. § 1985. Conspiracy to interfere with civil rights:

> (2) Obstructing justice; [...]; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course

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of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) **Depriving persons of rights or privileges.**

5. Florida State Constitution. Art. I, § 2. Basic Rights provides:

"All natural persons are equal before the law and have inalienable rights, among which [...] to acquire, possess and protect property".

6. Florida State Constitution. Art. I, § 9. Due Process provides:

"No person shall be deprived of property without due process of law".

7. New York State Constitution. Article I, Bill of Rights. Section 16 provides:

"The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation".

8. SCPA § 103, 44. Property. Anything that may be the subject the subject of ownership and is real or personal property, or is a chose in action.

9. Florida Statutes. Chapter 768. Negligence. § 768.19. Right of action provides:

When the death of a person is caused by the wrongful act, negligence, default,

or breach of contract or warranty of any person including those occurring in navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

10. Spanish Civil Code, Article 9. PERSONAL LAW. The Law of Succesion/Inheritance Law arising from death. The basic principle, whether for natural or for legal persona:

"one's personal law is determined by one's citizenship".

Under the Spanish Civil Code and the Inheritance Law:

"any award proceeds to be paid to the Plaintiffs are treated amd distributed as assets of the Estate if the action was brought by the Plaintiffs as Representatives of the decedent's Estate"

11. Chapter IV of the Spanish Civil Code, section of International Private Law, Art. 9.8:

"The Inheritance Law (The Law of Succession) will be governed by the national law of the deceased at the time of his/her death, whatever the nature of the property is and in whichever country the assets are found or the property is located"

12. Spanish Civil Code, Art. 809 provides:

"...the lawful portion corresponding to the parents of the decedent, when concurring with the spouse-widow, is of one-third of the inheritance".

PROCEDURAL HISTORY

A. The Spanish Domicile of the Decedent, Spanish Law Governs the Estate.

The Decedent was a resident, domiciliary and national of Spain at the time of her death. Her will executed in Bilbao, Spain, on May 16, 1984, was probated and not contested --nor the Spanish domicile-- in Bilbao, Spain, on June 12, 1989.

The facts, documentation and repeated assertions for the first eight years in support:

(i) The petition for ancillary letters testamentary:

> "a will of real and personal property made by said deceased was duly established in accordance with the laws of Spain where the decedent resided and was domiciled".

(ii) Plaintiffs' Motion in Limine for choice of law on compensatory damages, in the Florida action, served February 1, 1996, Index to Record on Appeal ("IRA"), Vol. IV, pp. 531-539:

> "...it does not actually conflict with the law of Spain, the state in which plaintiffs' decedent was domiciled and where she resided at the time of her death"

(iii) Defendants' Pan Am response to Plaintiffs in limine motion dated March 12, 1996, IRA Vol. IV, pp 616-620:

> "...compensatory damages in this case, which is brought for the death of a Spanish domiciliary aboard Pan Am Flight 103", et seq.

(iv) Rosenkranz's application to compromise and settle the wrongful death action, sworn April 24, 1996: "At the time of her death the decedent was a domiciliary of Spain", as well as the decedent's correspondence and the records of the Spanish Ministry of Interior and the Census in a non exhauxtive enumeration.

B. Nicholas Gilman, Jeffrey M. Liggio, Lionel A. Marks, attorneys for the Plaintiffs. Deprivation of adequacy of representation and effectiveness of counsel, ab initio, in civil conspiracy and collusion.

On December 14, 1989, Petitioner and Rosenkranz, jointly, retained Gilman and then-Gilman, Olson & ~~Pangia,~~ in Washington D.C. to commence a wrongful death action for damages. In prominent part, ¶2 of the retainer, it is stated "It is understood that you as our attorneys [..] will not settle any such action without our consent".

Jeffrey M. Liggio ("Liggio") of Liggio & Luckman in West Palm Beach, Florida, was subcontracted by Gilman without knowledge, consent or approval by the plaintiffs, nor has he been retained or is authorized to represent, much less misrepresent fraudulently.

Further to the sham and frivolous pleadings submitted, see Petitioner's "Appellant's Initial Brief, ¶ 16, et seq." devoid of real intent or defense, the repeated deliberate misrepresentations, fraud, conflict of interest, breach of trust and contract, legal malpractice and collusion in conspiracy to deny substantive rights, on March 04, 1997, by ambush and surprise, Gilman appeared as witness offering testimony and evidendence against Petitioner, his client, at a hearing held at the Surrogate's Court, New York County to establish the domicile of the Decedent and the distribution of the proceeds "irreparably tainting the proceedings" and

> "demolishing the integrity of the fact-finding process itself that is protected by the ethical guidelines governing attorneys, which require independent and vigorous representation of a client's interests". Chang v. Chang, 190 AD2d, 311, Greene v. Greene, 47 NY2d 447.

On January 2, 1998, Petitioner moved to

have Gilman, Liggio and Saguil disqualified and removed from the action on the grounds, inter alia, of conflict of interest - former client, in violation of various Rules Regulating The Florida Bar, and § 4-1.9 Conflict of Interest; Former Client, in particular. The DCAF-3 denied the motion as moot on January 16, 1998, Appendix A-12. Petitioner filed a motion requesting rational and comment as to the mootness of the motion. It was denied by order of March 16, 1998, Appendix A-10.

> Mootness: An appeal presents a live controversy where the rights of the parties will be directly affected by the determination and where the judgment has "immediate consequences (Matter of Hearst Corp. v Clyne, 50 NY2d 707, 714). Matter of Johnson v. Pataki, [91 NY1d 214].

As well Matter of Kadish, 240 AD2d 87 in re: interstate attorney misconduct with similar rules.

Marks was disqualified by decision/order (Renee R. Roth, S.) dated March 27, 1998.

C. The Worker's Compensation Claim. W.C.B. of New York State. March 1989.

On or about March 1989, a claim on behalf of the Estate of Maria N. Larracoechea, was instituted at the Workers' Compensation Board of the State of New York, W.C.B. Case No. 08906838

In Memorandum of Decision, dated February 21, 1995, Workers' Compensation Board Judge Warren Finkelstein determined that "the State of New York had no jurisdiction", in the Garret claim, another Pan Am 103 crew member with many similarities to the Decedent's claim.

By order dated June 28, 1995, Judge David L. Tobin determined that "the Workers' Compensation Law of England applies" in the action on

behalf of the Estate, Index to Record on Appeal ("IRA") Vol. III, p 489.

D. The Ancillary Letters Testamentary, 12.14-15.89. Surrogate's Court, New York County.

In need to administere a bank account, the sole asset the Decedent had in New York at the time of her death, on December 14, 1989, Marks submitted a petition for ancillary letters testamentary to the Surrogate's Court of New York County, on behalf of Petitiner and Rosenkranz. It was granted by decree (Renee R. Roth, S.) dated December 15, 1989. Following a pattern of vagueness and lack of specificity that later on would allow for "anything", the petition is not filed pursuant to any specific rule or statute of the Surrogate's Court, on ancillary letters, as indeed it was intended to facilitate legal manouvering with neither real and vigorous defense of the Estate's and the plaintiffs' interests nor opposition but for a long fiction of litigation and prolongued injury, prejudice and irreparable harm.

E. The Wrongful Death Action, 12.20.89. Circuit Court, Dade County, Florida.

On December 20, 1989, a "Complaint for Damages" was filed by Gilman and Liggio captioned: "HANS FRANK ROSENKRANZ and MARINA DE LARRACOECHEA AZUMENDI, Personal Representatives of the Estate of MARIA NIEVES DE LARRACOECHEA AZUMENDI, deceased, on behalf of said Estate and the lawful survivors of the deceased, Plaintiffs, vs. PAN AMERICAN WORLD AIRWAYS, INC., a foreign corporation, PAN AMERICAN WORLD SERVICES, INC., and ALERT MANAGEMENT SYSTEMS, INC., Florida Corporations, Defendants", WITH DEMAND OF TRIAL BY JURY. In the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. Case No. 89-56581. No Summons and Service of Process of the Complaint appear filed with the Court today. An "Amended Complaint for Damages" was

filed. No mention is made of statute, rule, Wrongful Death Act or otherwise. No jurisdiction is asserted. No concern, issue or objection is raised by Pan Am.

Estimating that circa 300 pages of the record were missing, on July 8, 1998, Petitioner moved 'to supplement and correct the record on appeal and for judicial notice of "added difficulties"' pursuant to Fla.R.App.P., Rule 9.200 (f) (2): "No proceeding shall be determined, because of an incomplete record, until an opportunity to supplement the record has been given", and for the DCAF-3 to direct Rosenkranz and Pan Am to submit said missing record. The motion was denied by order of July 14, 1998, Appendix A-8.

The action is not governed by the Warsaw Convention In Re Pan American Corp., 950 F.2d 839 (2nd Cir. 1991).

The destruction of Pan Am flight 103 was determined preventable by the "President's Commission on Aviation Security and Terrorism" on May 15, 1990; and by determination of Sheriff Principal John S. Mowat, QC, in the "Fatal Accident Inquiry relating to the Lockerbie Air Disaster", dated March 18, 1991.

F. Unanimous Liability of Pan Am. 07.10.92. Jury trial scheduled for 06.03.96.

The liability of the airline was unanimously established on July 10, 1992, in the United States District Court, Eastern District of New York, M.D.L. 799 (TCP) (All Cases) (JMS) 7190, and affirmed in the United States Court of Appeals for the Second Circuit. Defendants' Petition for certiorari was denied. In re Air Disaster at Lockerbie, Scotland on 12-21-88, 37 F.3d 804 (2nd Cir. 1994), cert. denied, 115 S.CT. 934 (1995).

On December 11, 1995, a notice of jury trial scheduled a date for June 3, 1996.

G. Pan Am's Motion To Dismiss On The Ground Of 'Forum Non Conveniens'. 03.13.96.

On March 13, 1996, Pan Am filed a motion for dismissal on the ground of 'forum non conveniens' based on Kinney System, Inc. v. Continental Insurance Co., 674 So.2d 86., a recent decision by the Supreme Court of Florida, IRA Vol. IV, p 572, et seq. A special one hour hearing was set for May 20, 1996. By letter of same date Pangia informed the Plaintiffs "Jeff Liggio appeared in Miami for the hearing. The result fortunately is that the judge will await the outcome of the petition in the New York Surrogate's Court and postponed the 'forum non conveniens' motion until that time".

Petitioner, badly represented, when not misrepresented by Gilman-Liggio, filed various papers in an attempt to improve the record and inform the DCAF-3 as to the facts, sequence of events and unusual circumstances and difficulties. After nearly 40 days of irregularities in the mail, incomplete filed papers and copious correspondence, extensively developed in Petitioner's motion to supplement the record and for judicial notice of "added difficulties" A-8; appellees moved to strike. Unfairly, the motion was granted by order of June 25, 1998, A-9.

H. The Mediation Conference. 03.14.96. Miami, Florida.

Advised by Gilman and Liggio as to the requirement to enter settlement negotiations prior to trial --when in fact without consultation with, or knowledge and consent of Petitioner, at least, a motion for mediation had been filed on behalf of the plaintiffs IRA Vol. IV, pp 520-521-- a first demand of $5,900,000.00 was submitted to Dominick Alfieri of UASAIG, on September 26, 1995. A counter offer of $1,504,240.00 was made on or about November 1995.

On March 14, 1996, Petitioner and Rosenkranz

flew from Spain and Germany, respectively, to attend a travesty of a mediation conference scheduled in Miami, Florida. Initially to be held by Arden M. Siegendorf, the last minute replacement, mediator Phillip J. Mandina, should have been vehemently rejected by Gilman and Liggio, had they not been in conspiracy and collusion, and intent to settle by any and all surreptitious methods. Mandina's clients include: Underwriters Guarantee Insurance Company; Specialty Claim Insurance Adjusters; Underwriters Financial of Florida. At the outset Mandina violated the essence and main principle of mediation, impartiality, Rule 44.1011 of the Florida Statutes, and Fla.R. Civ.P. § 1.700. After a five hour pressure cooker to settle, with a counter offer of $1,504,240.00, an impass was reported, IRA Vol. IV, p. 629. A conflict of interests developed.

Gilman informed the Plaintiffs he was to undergo brain surgery shortly after and be replaced by his partner Michael Pangia ("Pangia"), never involved in the case in the previous seven years, to Petitioner's knowledge.

On March 21, 1996, Pan Am made an offer of judgment for $1,500,000.00, rejected by Petitioner on March 28, 1996.

On April 8, 1996, without Petitioner's knowledge and consent, Liggio filed a "Petition for Appointment of Administrator ad Litem" on behalf of Rosenkranz, IRA Vol. IV, pp 632-634.

I. Rosenkranz's Application To Compromise And Settle The Wrongful Death Action. 05.15.96. Surrogate's Court, New York County.

On May 23, 1996, Petitioner, unaware, was served in Bilbao, Spain, with a citation and petition captioned "Application to Compromise and Settle the Cause of Action for the Wrongful Death and Conscious Pain and Suffering and for Judicial Settlement of the Account with Respect to the Proceeds", filed at the Surrogate's Court,

New York County.

The petition and citation to show cause, return day June 21, 1996, abund in legal trickery and procedural non-complience: (i) the citation is neither signed nor sealed by the Court, as required by SCPA § 306.4 abstention of which unleashes unlimited uncertainty and indefinition as to legal and judicial actions, abuse and indeed anarchy; (ii) Gilman's undeserving fees and disbursments of $364,065.71, from December 20, 1989 to May 8, 1996, are billed under "Pangia & Gilman" for the legal nightmare and prolongued injury inflicted; (iii) by specific clause Gilman cannot settle without the clients' consent; (iv) various affidavits are invalidated.

The application is a tailored to convenience, misrepresetnation of the facts, findings and discovery in the eight years the Estate and the lawful survivors have so hard worked, and long waited, for justice and "the day in Court". Essential facts and findings are intentionally misrepresented, silenced or perjured.

Within twenty four hours, at great detriment to the personal, intellectual, professional and financial aspects of her life, Petitioner left for New York to, diligently, seek new independent counsel.

Breach Of Fiduciary Duties.

Rosenkranz, with the help of Marks, Gilman, and Liggio, and their sworn affidavits, breached his fiduciary duties of honesty and fairness pursuant to SCPA § 711.2, 6, and 7, and, greedily, petitioned the 100% of the proceeds to himself, in blatant disregard for the Decedent's dispositions, and her mother's 45% interests ~~in~~ the Estate according to the will and Art. 809 of the Spanish Civil Code, duly asserted, sworn and filed with the probate court, according to the Spanish Law and customs

On September 10, 1996, on an unrelated motion, off the court's calendar, with Petitioner's new independent counsel absent, Marilyn Ordover --sitting for Surrogate Roth-- determined that the "matter is ripe for a decision" and the "time has run out for opposition".

No notice was given which was adequate to satisfy the constitutional requirement of notice before judicial action is taken Walker v. City of Hutchinson, 352 U.S. 112 (1956), in fact there was complete absence of notice of any hearing on this issue, violating Petitioner's right to due process.

No evidence was presented before the Court, by anyone having knowledge of any fact, to show that the settlement should be approved. By so approving the unfair settlement the Court deprived Petitioner, and the interests she represents, of property without the due process of law required by the Fourteenth Amendment to the United State Constitution, Thompson v. City of Louisville, 362 U.S. 199 (1960); Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232 (1957), and Article 1. Sections 6, and 16 of the New York State Constitution.

By "Settle Order" dated October 3, 1996, Surrogate Roth authorized the compromise and settlement, the compensation for the petitioner's fees, and the net proceeds to be deposited in a interest bearing escrow account pending the determination of the issue of decedent's domicile. The probate court arbitrary, capricious and until-ly, ignoring the overwhelming facts and documentation in its files, disturbes the long established, and repeatedly asserted Spanish Domicile of the Decedent, after eight years.

It was followed by an ex-parte order, footnote 1, Appendix K, A-13.

All probate proceedings but for the need of ancillary letters testamentary of December 1989, supra, are presently on appeal, noted

for the January 1999 Term, on the grounds, inter alia, of lack of subject matter jurisdiction, civil conspiracy, abuse of discretion, conflict of interest - former client.

> "The granting of Ancillary Letters Testamentary to administer a small bank account of the decedent in New York is not sufficient to confer jursidiction to the Surrogate's Court to adjudicate with respect to properties of non-domiciliaries of the Estate of New York. [...] Assets must "arrive" or "come into" the State in good faith. Matter of Obregon, 230 AD 2d 47-54 (1997), affirmed, 91 NY2d 591.
>
> "We now affirm. The Island of Manhattan can no more declare itself the command center over Mexico and the Cayman Islands with respect to the subject assets in the subject assets in the circumstances of this case today, than the Island of Tobago could pretend to rule the world in 1808" (see, Buchanan v. Rucker, 9 East 192, 194, 103 Eng. Rep. 546, 547 [K.B. 1808] ["Can the Island of Tobago pass a law to bind the the rights of the whole world? Would the world submit to such an assumed jurisdiction?" Held, No.]). Obregon.
>
> "New York is not yet a province of Turkey" Sultan of Turkey v. Tiryakian, 213 N.Y. 429-438 (1915),
>
> "or Spain" King of Spain v. Hullet, 1 Dowl. & Cl. 164.

On December 20, 1996, for cause and drained of finances and faith in various members of the legal profession, Petitioner appeared personally, in New York, as a last resort.

A first date for a hearing was scheduled on March 4, 1997, to establish the domicile of

the Decedent and the distribution of the proceeds. By surprise and ambush Gilman appeared as witness, having previously submitted for the Florida court, motion papers asserting the Spanish domicile of the Decedent.

J. Rosenkranz's Stipulation to Dismiss Action, 03.06.97. Order 03.12.97. Circuit Court, Dade County, Florida.

Dated March 6, 1997 --no mention was made by Rosenkranz, Gilman or Marks actively attending the hearing of March 4, 1997, at the Surrogate's Court-- an stipulation signed by Liggio and Lambert, and order for dismissal with prejudice was submitted to the circuit court of Dade County. The order appears signed by Judge David L. Tobin on March 12, 1997, and recorded on March 17, 1997. A fax transmission report at the top shows date of January 27, 1997, and the name Garfield & Hecht, not an identified and recognized party to the action.

The order is reprinted in the Appendix K hereto at A 13-15. Footnote 1 of the stipulation states:

> 1 Pursuant to the order of the Surrogate's Court of New York, County of New York, dated November 7, 1996, and attached hereto, Hans Frank Rosenkranz is authorized and directed to settle and compromise this action on behalf of himself and Marina de Larracoechea Azumendi, to release the Releases as defined below. Additionally, Hans Frank Rosenkranz is authorized and directed to discontinue and withdraw the causes of action for wrongful death and conscious pain and suffering made in the captioned action.

The New York order appears to be missing form the Florida record on appeal., Petitioner supplemented the record on appeal as per copy submitted by Gilman on or about March 17, 1997, which shows unsigned order by curcuit court judge and order of probate court without stamp of entry.

Dated March 21, 1997, Petitioner served and submitted in emergency to the circuit court a Petition for Reconsideration of Order of Dismissal and Granting of Stay and Restraining Order, stating Petitioner's opposition and the on going proceedings.

A hearing was scheduled for May 1, 1997. Petitioner appeared with counsel Leslie F. Hecker ("Hecker"), FBN 749869. On May 30, 1997, Hecker filed a notice of appeal from: (i) Stipulation and Order for Dismissal with Prejudice, dated March 6, 1997; (ii) Order on Plaintiffs' (Rosenkranz) Motion to Compel Settlement, dated May 2, 1997; (iii) Order Denying Petition for reconsideration; (iv) Order Deying/Granting Plaintiff's/Defendant's Motion to Stay Enforcement of Settlement, dated May 30, 1997.

Hecker engaged in poor legal representation and dilatory tactics intended to further the settlement and burden Petitioner with problems rather than solutions. For cause Hecker was terminated. On September 19, 1997, Petitioner filed with the Third District Court of Appeal, "Notice of Dismissal of Attorney and Appearance in Self-Representation", and further moved for an enlargement of time to file the record on appeal and the initial brief, highlighting the unusual circumstances and difficulties of the case. The district court granted one enlargment up to and including December 1, 1997, with no further extensions allowed, and if not timely filed, dismissal of the appeal.

Petitioner, residing and appearing personally in New York, as well as Florida, as a last resort, was granted TWO MONTHS to get familiar with an eight year case, a remote record, and the Florida law, with no further enlargements.

On November 26-27, 1997, when the proceedings in New York permitted, Petitoner flew to Miami, to obtain the complete record and expressly requested it so. The clerk's office of the circuit

court did not provide Petitioner with said complete record, nor was it transferred as requested and based on the court's computer print-out, as amply argued in denied motion A-8.

On December 1, 1997, Petitioner submitted Appellant's Initial Brief claiming the substantive violations and denials, civil consiracy, abuse of discretion, breach of contract and trust, conflict of interest, fraud, collusion and legal malpractice. Reply briefs were further filed. At oral argument for the appeal, on September 23, 1998, Petitioner further brought up to the attention of the Court the deliberate misrepresentations and retractions from the record submitted by Gilman, Liggio, and Pan Am, and the effect of lack of jurisdiction and collusion.

Petitioner attemped to supplement the record and informed the Court where Gilman-Liggio had misrepresented or silenced. The Court unfairly denied the opportunity to do so. The record is incomplete, incorrect, distorted and manipulated to convenience.

REASONS FOR GRANTING THE WRIT

The multiple violations and abuses committed and the delay and denial of justice stated place in serious questioning the integrity and repute of the American legal and judicial process, placing it in the public scrutiny, national and internationally, given the relevance and public interest of the case in various issues.

Further once those violations have been made manifest the Court's inherent powers to prevent, rectify and redress abuse require effective and vigorous action. In this case the victims have been twice victimized by a ten year grueling delay of "the day in court", with prolongued frivolous litigation and injury to the personal, intellectual, professional and financial aspects, prejudice and irreparable harm .

I

IN HOLDING THAT "NO REVERSIBLE ERROR HAS BEEN DEMONSTRATED" THE DISTRICT COURT FAILS TO WEIGHT AND MEASURE ACCURATELY THE MANY ACTORS AND FACTORS IN CIVIL CONSPIRACY AND COLLUSION INTENT IN PERSEVERING ON THE DENIAL OF A RIGHT TO AN ACTION, TRIAL BY JURY, THE GUARANTEES TO DUE PROCESS OF THE FOURTEENTH AMENDMENT AND EQUAL PROTECTION UNDER THE LAW

THE COURT FURTHER FAILS IN ITS INHERENT POWER TO PREVENT ABUSE, UNFAIRLY BURDENS DISPROPORTIONATELY THE WEAKEST PARTY AND SETS A DANGEROUS EXAMPLE OF DENIAL OF RIGHTS

The determination by the district court that "no reversible error has been demonstrated" camouflages, in its brief simplicity, a constant method of burdening of the Petitioner pro-se, intended to hinder and hampered all efforts even before standing in front of the court to further the civil conspiracy to deny substantive rights, the due process of law and equal treatment by the law. Petitioner has been systematically denied these guarantees secured in the Constitutions of the United Sates and the States of Florida and New York, and timely raised. This simplicity in desguise requires close and detailed scrutiny of the sequence of abuses and denial and its circumstances.

At the outset the District Court ignores Petitioner's oral argument as to the record and the statements submitted by Rosenkranz, motion in limine for compensatory damages based on Spanish Law, the law of the country were the decedent resided and was domiciled at the time of her death. The District Court furthers the position and abuse of discretion of the Circuit Court which allowes and accepts convenient retractions from previous stated facts upon which the litigation has been based up to a point.

Said retractions on the central and decisive

issue of the Spanish domicile of the decedent, in the files of the court, are coordinated and concerted by the attorneys for both plaintiffs' and defendants. Said retractions are "deliberate misrepresentations" The Florida Bar v. Hmielewski, 702 So.2d 218, allowing counsel to "progress with inconsistent position" Godwin v. Bogart, 675 So.2d 606, intended to, and manifestly departing from, the essential requirements of law, to railroad the action into a concerted effort to settle.

The District Court fails to see the abuse of discretion and process of the Circuit Court that, first, allows the attorneys to "progress with inconsistent position" and "deliberate misrepresentations", second, allows the wrongful death action to be converted in an application to compromise and settle in the Surrogate's Court of New York the action on behalf of the Estate of an Spanish domiciliary, a court lacking subject matter jurisdiction.

If Pan Am's motion to dismiss on 'forum non conveniens' was based on Kinney System, Inc. v. Continental Insuranco Co., 674 So.2d 86,

> "action may be dismissed on forum non conveniens grounds that satisfactory remedy may be more conveniently sought in jurisdiction other than Florida when (1) trial court finds that an adequate alternative forum exists which posesses jurisdiction over the whole case [...] weighing in balances of strong presumption against disturbing plaintiffs' initial forum choice [...]resting in sound discretion of trial court reviewable only for abuse of discretion. F.S.A. RCP Rule 1.061.

The district court gives continuity to the arbitrary and capricious decisions of a court intensely bias to a settlement, that should have recused itself, when incapable of providing fair impartial treatment and decisions.

The choice of forum lied between Florida or Spain.

> "Due process requires a fair trial before a judge without actual bias against the defendant or an interest in the outcome of his particular case" Bracy v. Gramley, Warden, 520 U.S. 899 (1997)

The circuit court in Florida, and the probate court in New York determined the matter by ex-parte order, having both courts predecided on the compromise and settlement, regardless of the facts, merits and rights.

Petitioner, recognized and with legal standing from the outset, in consistent and coherent opposition to the unfair settlement and the surreptitious methods used to secure it, sustaining the initial demand for jury trial in the chosen forum, was ignored and kept uninformed, being presented with decisions and orders, in concerted effort and collusion, as a fait accompli. And in so doing inflicting "deprivation of protectable property interest by one acting under color of law", Parrat v. Taylor, 451 US 527, 535, and "with private actors to interfer with civil rights". "

The hallmark of property "is an individual entitlement grounded in state law, which cannot be removed except 'for cause'" (Logan v Zimmerman Brush Co., 455 US 4222, 430; Parratt v. Taylor, 451 US 527, 535). Town of Orangetown v. Magee, 99 NY2d 41.

Wrongful Death Act. The Right of Action. Florida Statutes. § 768.19.

> A statute cannot dissolve either and inchoate or vested right which is of constitutional magnitude", Robbins v. Robbins, 360 So.2d 10, Fla.App. 1978.

The District Court affirms the denial of due process of the Fourteenth Amendment and the equal protection of the law, the multiple violations, legal trickery and procedural non-compliance vitiating the ten year action.

CONCLUSION

The petition for a writ of certiorari should be granted to establish the limits to, and as a deterrant of, extreme ilegal and prolongued abuses to impose an undesired course of justice.

Respectfully Submitted

Marina de Larracoechea Azumendi
307 East 44th Street; 1120
New York, New York
(212) 697-0189

Labayru No. 1
48012 Bilbao
Spain
34.94.421-3385